IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 8258 of 2005

Between:

Singareni Collieries Co-operative stores Ltd., through its Managing Director,
Mr.K.V.Subba Rao,
S/o.K.V.R.Deekshitulu, R/o.Kothagudem.

..... PETITIONER

AND

1 The Asst.Commissioner of Labour-Cum-Appellate Authority

under sec.48(1) of A.P.Shops & Establishments
Act, 1988, Adilabad.
2 The Deputy Commissioner of labour-cum-Second appellate

Authority under Sec.48(3) of A.P.Shops & Establishments
Act, 1988, Warangal.
3 Mr.Syed Abbas, S/o.Abdul Gaffar,
R/o.Ramakrishnapur, Adilabad Dist.

.....RESPONDENTS

ORDER:

Singareni Collieries Co-operative Stores Limited has filed this writ petition assailing a Quasi Judicial Order of the first respondent, dated 29.03.2003 in S.A.No.2 of 2000 and the Order of the second respondent dated 31.01.2005 in S.A.No.3 of 2003.

2. The third respondent was employed as a Salesman in the Singareni Super Bazar, under the administrative control of the writ petitioner and he worked as such from 01.05.1995 to 31.08.1998. On allegations that he misappropriated an amount of Rs.3,07,794-86ps., a charge sheet was issued to the third respondent on 23.09.1998. The said respondent submitted his reply on 03.02.1999. On 10.10.1999 the third respondent sent up a communication to the

Enquiry Officer appointed to go in to the charges framed against the third respondent to the effect that he declines to participate in the domestic enquiry as he had chosen to raise a dispute before the competent authority under Section 61 of the A.P. Co-operative Societies Act, 1964 (for short the Act 1964) with regard to the petitioner's claims for refund of the amount allegedly misappropriated by the third respondent. In view of the third respondent's disinclination to participate in the enquiry, the Enquiry Officer proceeded with the departmental enquiry *ex-parte* and submitted his report to the disciplinary authority on 24.12.1999. It is the petitioner's case before the respondents 1 and 2 as also reiterated here that on 24.12.1999 the report of the Enquiry Officer along with the connected disciplinary enquiry records and a show cause notice proposing dismissal from service was communicated and served on the third respondent. The third respondent also submitted his objections to the proposal to dismiss him from service, on 22nd February 2000. Eventually by an order, dated 23.06.2000 of the disciplinary authority, the third respondent was dismissed from service with effect from 27.06.2000. Prior to the order of dismissal dated 23.6.2000, the third respondent invoked the dispute resolution mechanism under Section 61 of the Act 1964 by way of A.R.C.No.1 of 2000. The Arbitrator by the Award dated 28.04.2001, allowed A.R.C.No.1 of 2000 and declared that the third respondent is not liable to refund any amount to the petitioner society, as misappropriation by him was not established. It would appear that the petitioner filed an appeal before the Cooperative Tribunal, Hyderabad against the Award dated 28.4.2001 in A.R.C.No.1 of 2000. The

petitioner claims that the appeal is pending whereas the third respondent asserts that the appeal has been rejected by the Cooperative Tribunal. Be that as it may.

3. On the failure of the petitioner to reinstate him into service, despite the award in A.R.C.No.1 of 2000, the third respondent preferred an appeal under Section 8 of the A.P. Shops and establishments Act, 1988 (for short the Act 1988) before the first respondent vide S.A.No.2 of 2000, which was allowed by the first respondent on 20.11.2001. Aggrieved thereby, the petitioner preferred S.A.No.2 of 2002 before the second respondent-appellate authority under the Act 1988. The second respondent by the order dated 23.04.2002 set aside the order dated 20.11.2001 in S.A.No.2 of 2000 passed by the first respondent on the ground that the first respondent had passed orders without framing specific issues to be considered on the basis of the contentions urged by the parties, failed to appreciate the evidence adduced by the parties, the report of the enquiry officer and the other material papers filed by both the parties and that the point of law in such mis-appropriation case has not been considered. The second respondent also recorded the finding while arriving at the final conclusion in the appeal, that the first respondent did not record any reasons on the specific questions involved. Accordingly, the second respondent set aside the order, dated 20.11.2001 and remanded the matter back to the first respondent for a de-novo adjudication.

4. Thereafter, by the order, dated 29.03.2003 the first respondent again allowed S.A.No.2 of 2000, setting aside the order of dismissal of the third respondent

dated 26.06.2000 and directed the petitioner to reinstate the third respondent into service with immediate effect and also directed the petitioner to pay back-wages (to the third respondent) from the date of dismissal i.e.26.06.2000 till the date of receipt of the order in S.A.No.2 of 2000, within the time stipulated. Aggrieved thereby the petitioner preferred an appeal to the second respondent. By the order, dated 31.01.2005 the second respondent disposed of the appeal.

5 . The petitioner and the respondents contend that the appeal was partly allowed, but despite considerable effort this Court is unable to unravel the meaning of the operative portion of the order of the second respondent. The order of the second appellate authority reads as under:

> *"Therefore, I have no hesitation to allow the appeal to the extent of reinstatement into service and back wages from 27.06.1998 and set aside the orders of the first appellate authority dated 29.03.2003, but for the pendency of proceedings before the appellant authorities from the date of application of the respondent i.e. 22.09.2000 to 22.01.2005 under first proviso of Section 48(3) of the A.P.S & E Act, 1988 the respondent no.1 is entitled for wages and compensation of Rs.10,000/-. Therefore, I order the appellant to deposit the balance amount within 30 days from the dae of receipt of the order."*

6. Clearly the first respondent by the order dated 29.03.2003 not only set aside the order of dismissal dated 26.06.1998, but also directed the writ petitioner to reinstate the third respondent into service with immediate effect with a further direction to pay back wages from the date of dismissal till the date of receipt of order dated 29.03.2003. The second appellate authority, as apparent from the portion extracted above has allowed the appeal to the extent the first respondent directed reinstatement into service and back wages and has also

set aside the order of the first respondent dated 29.03.2003. Thereafter, what he has done and what he has directed is incomprehensible. Somewhere down the line he has also said that the third respondent is entitled for wages and compensation of Rs.10,000/-, but from which date and whether the third respondent is entitled to reinstatement into service and wages and if so for what period is not clear.

7. The learned counsel for the petitioner and the third respondent are equally at a loss to explain the import of the order of the second respondent as also the result of the appeal.

8. Insofar as the first respondent's order is concerned, the grievance of the petitioner is that despite the report of the enquiry officer being available on record as apparent from the order dated 23.04.2002 in S.A.No.2 of 2002, the first respondent failed to consider the elaborate report of the enquiry officer, the analysis of the evidence in the domestic enquiry and the conclusions arrived at by the enquiry officer which conclusions had persuaded the disciplinary authority to impose on the third respondent herein the punishment of dismissal from service for the grave misconduct of misappropriation of funds of the employer alleged and validly found. This failure of the first respondent-appellate authority under the provisions of Act 1988 is fatal and vitiates the order dated 29.03.2003, is the substance of the petitioner's case as alleged by Sri J.Prabhakar, learned counsel for the petitioner.

9. The operative portion of the order of the first respondent dated 29.03.2003

would also compel the inference that officers posted to exercise the functions of an appellate authority under the 1988 Act as a Primary Tribunal are incompetent to exercise even the minimal quasi judicial functions, consecrated upon the said authority. It is a matter of deep concern and regret that the Government which through the instrumentality of an Act has established quasi judicial tribunals fails to take the minimum care to ensure appointment of competent officers to exercise quasi judicial functions under the Statute. The trauma of the quasi judicial process before the authorities under the 1988 Act has been suffered by the petitioner as well as the third respondent. Five years have elapsed and produced two orders of the first and second appellate authority both of which convey no meaning. The orders signifiy nothing. The reasons are incomprehensible and as far as the second appellate authority order is concerned even the conclusion is indecipherable. This is a tragedy and the consequence of the indifference of the State to identify appropriate officers or putting in place adequate training mechanisms before letting them loose on the citizens to exercise quasi judicial powers. We hope and trust that the State Government would wake up to this terminal state of mala-administration of quasi judicial functions by the authorities under the 1988 Act, and would take immediate remedial measures.

10. The order of the first respondent dated 29.03.2003 is unsustainable as the first respondent despite being the first appellate authority under Section 48(1) of the Act,1988 has proceeded as though he was a disciplinary authority himself. The first respondent was required to consider the enquiry report and

the order of dismissal and thereupon adjudicate upon the validity of the order of dismissal of the third respondent on the basis of an examination. He should determine the validity of the conclusions recorded in the enquiry report. This, he has failed to do. So far as the second respondent is concerned the only contribution of the second respondent is the paragraph extracted above. The rest of the order is a chronology of past events and the operative portion as already stated is incomprehensible.

11. Since this Court is unable to understand what the order means, I have no alternative, but to quash the same, with the fond hope that the first and second appellate authorities deem it fit to pass orders that commend themselves to comprehension by a Court of judicial review.

12. On the analysis above, the orders of the first respondent dated 29.03.2003 in S.A.No.2 of 2000 and the orders of the second respondent dated 31.01.2005 in S.A.No.3 of 2003 are quashed. S.A.No.2 of 2000 is directed to be heard and disposed of expeditiously by the appellate authority under section 48(1) of the Act, 1988, of the Hyderabad District as the order of the authority at Adilabad is wholly unsatisfactory in terms of the content as well as context. A copy of this order shall be communicated to the Chief Secretary, Government of Andhra Pradesh and the Secretary to Labour, Government of Andhra Pradesh for appropriate administrative action in the light of the observations made herein.

13. The first respondent is directed to forthwith transmit the entire records

pertaining to S.A.No.2 of 2000 to the appellate authority under Section 48(1) of the 1988 Act, of the Hyderabad District to facilitate adjudication by the authority at Hyderabad District, in view of the directions herein.

14. Shri Ranga Reddy, learned counsel for the third respondent would urge that the first respondent is out of service since the order dated 2000 and is in a very pathetic financial position. It is appropriate that his appeal before the authorities under the Act 1988 should be expeditiously considered and disposed of. Sri Ranga Reddy, learned counsel for the third respondent would also state that having regard to the fact that the third respondent is out of employment since 2000, he is not even in a position to prosecute the appeal before the first appellate authority pursuant to the orders in this Judgment. By the interim order dated 15.04.2005 in this writ petition, this Court granted interim suspension of the orders of the first and second appellate authorities on condition that the writ petitioner deposits the compensation amount (Rs.10,000/-) as ordered by the second appellate authority, within a period of two weeks. It is represented by Sri J.Prabhakar, learned counsel for the petitioner that in compliance of the above conditional order of this Court dated 15.4.2005 the petitioner has deposited a sum of Rs.10,000/- before the second appellate authority-Deputy Commissioner of Labour, Warangal by way of a demand draft drawn on the Andhra Bank, Kothagudem. In view of the submission of the third respondent, the third respondent is at liberty to withdraw the amount of Rs.10,000/- so deposited by the petitioner and the second respondent is directed to pay the deposited amount to the petitioner on an application made by him in this behalf.

The third respondent shall not be liable to refund the amount of Rs.10,000/- irrespective of the consequences of the first or second appellate orders to be passed consequent on this Judgment.

15. Accordingly, the writ petition is allowed. No order as to costs.

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28-09-2005

kvrm/pvsn